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13 Attorneys for Plaintiffs

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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
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18 JOSE RAMIREZ, LUIS GOMEZ, and  
MARCK MENA ORTEGA on behalf of  
19 themselves and all persons similarly  
situated,

20 Plaintiffs,

21 v.

22 GHILOTTI BROS., INC., a corporation;  
23 and DOES 1 to 50, inclusive,

24 Defendants.

Case No. C-12-4590-CRB

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND INJUNCTIVE  
RELIEF**

Judge: Hon. Charles R. Breyer

Date: April 18, 2014

Time: 10:00 a.m.

Ctrm.: 6, 17th Floor

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on April 18, 2014 at 10:00 a.m., or as soon thereafter as the matter may be heard, Plaintiffs Jose Ramirez, Luis Gomez, and Marck Mena Ortega, on behalf of themselves and all persons similarly situated (collectively, “Plaintiffs”), will and hereby do move this Court for an order granting Plaintiffs’ Motion for Final Approval of Class Action Settlement and Injunctive Relief (the “Final Approval Motion”). The Stipulation to Class Action Settlement will fully resolve this putative class action by establishing a fund of \$950,000 to pay the 271 laborers eligible to be class members on their claims that Defendant Ghilotti Bros., Inc. (“GBI”) violated California and federal law by failing to pay for all hours spent loading and unloading GBI trucks, failing to provide required meal and rest breaks, and failing to provide accurate pay statements.

The Final Approval Motion seeks entry of the Proposed Order Granting Plaintiffs’ Motion for Final Approval of Class Action Settlement and Injunctive Relief and Motion for Attorneys’ Fees, Costs, and Class Representative Awards, filed herewith, which, *inter alia*:

- Finds that notice to the class has been completed in conformance with the Court’s Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement and Injunctive Relief, Dkt. No. 97 (“Preliminary Approval Order”), and was the best notice practicable under the circumstances;
- Holds that the class notice was adequate and satisfied due process requirements;
- Holds that the Class Representatives and Class Counsel have fairly and adequately represented and protected the interests of the Class in the Action;
- Excludes the twenty-six individuals who filed valid and timely Requests for Exclusion from the Settlement Class certified by the Court’s Preliminary Approval Order;
- Finds that the Settlement was entered into in good faith pursuant to non-

collusive, arms-length negotiations, and that the Settlement is fair, reasonable, and adequate;

- Grants final approval of the Settlement pursuant to Federal Rule of Civil Procedure 23(e);
- Directs the parties to effectuate the terms of the settlement as set forth in the Stipulation to Settlement Agreement (“Settlement Agreement”), Exhibit A to the Declaration of Gay Crosthwait Grunfeld in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement and Injunctive Relief and Motion for Attorneys’ Fees and Costs and Class Representative Incentive Awards, (“Grunfeld Declaration”) filed herewith;
- Directs GBI to pay \$118,500.00 within 5 calendar days of the date the Court enters the Final Approval Order, directly as follows, and to issue 1099s for each of the following recipients upon receipt of a W9:
  - \$15,000 to each of the Class Representatives;
  - \$10,000 to Simpluris, the Settlement Administrator;
  - \$60,000 to Class Counsel for out-of-pocket expenses; and
  - \$3,500 to the California Labor and Workforce Development Agency as a PAGA penalty.
- Directs GBI to pay, within 30 calendar days of the date the Court enters the Final Approval Order, \$140,000.00 to Simpluris for distribution to the Class, and one-third of the amount awarded in attorneys’ fees (\$95,000) to Class Counsel (“Initial Disbursement”);
- Directs Simpluris to distribute the \$140,000.00 Initial Disbursement to the 245 members<sup>1</sup> of the class pursuant to the formula set forth in Section 3 of

<sup>1</sup> As detailed in the Declaration of Krista Tittle for Simpluris, Inc., the Appointed Claims Administrator, filed herewith, twenty-six (26) class members elected to exclude themselves from the settlement, leaving a total of 245 class members. The shares of the (footnote continued)

the Settlement Agreement within 10 calendar days of receipt from GBI;

- Declares that the settlement funds allocated for the class, which remain after the Initial Disbursement (“Remaining Settlement Funds”) will accrue simple interest at 5% per annum dating from January 15, 2014;
- Directs GBI to pay the following amounts, for distribution as follows:
  - to Simpluris to distribute to the Class, with the Class receiving the interest that accrues: (1) One-half of the balance of the Remaining Settlement Funds, to be paid on or before July 1, 2015; and (2) the remaining amount of the Remaining Settlement Funds to be paid in a final payment on or before December 15, 2016;
  - to Simpluris for additional settlement administration costs in amounts not to exceed \$5,723.50 on July 1, 2015 and of \$5,723.50 on December 15, 2016; and
  - to Class Counsel for attorney’s fees: \$95,000 on July 1, 2015 and \$95,000 on December 15, 2016.
- Finally orders GBI to comply with the injunctive relief provisions of paragraph 13 of the Settlement Agreement; and
- Retains exclusive and continuing jurisdiction over the present action and the settling parties, including all class members, for purposes of enforcing and interpreting the Settlement Agreement, the Final Approval Order, and the claims and payment process and the injunctive relief established therein, until the date of the last payment by GBI.

As explained more fully in the accompanying Memorandum of Points and Authorities, the proposed settlement meets the standard for final approval and is in the best interests of the Class Members. Plaintiffs’ Motion is based on this Notice of Motion; the accompanying Memorandum of Points and Authorities; the Grunfeld Declaration; the twenty-six (26) individuals who opted out will revert to GBI.

1 Declarations of Wendy E. Musell, Jose Ramirez, Luis Gomez, Marck Mena Ortega, and  
2 Krista Tittle, filed herewith; the entire record in this case; any other papers filed in support  
3 of the Motion; as well as any argument of counsel at the hearing.  
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5 DATED: March 27, 2014

Respectfully submitted,

6 ROSEN BIEN GALVAN & GRUNFELD LLP

7 By: /s/ Gay Crosthwait Grunfeld

8 Gay Crosthwait Grunfeld

9 Attorneys for Plaintiffs  
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